

Navy's Insistence on Red Hill Fuel Tank Secrecy Raises Alarms

State and city agencies push back against a military effort to require non-disclosure agreements in work to prevent more fuel leaks that could threaten Oahu's water.

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The U.S. Navy is asking officials from government agencies that want to participate in the implementation of an agreement to update underground fuel tanks at Red Hill to sign non-disclosure agreements that would prevent them from sharing information related to procurement and national defense.

But not everyone is comfortable signing the confidentiality agreements, raising questions about how much of the process of fixing the aging tanks should be made public.

The state Water Commission plans to discuss the Navy's request during a meeting Thursday. Michael Buck, a farmer from Waimanalo and commission member, said he's concerned that the non-disclosure agreement may be too broad.

"As a commissioner I don't know how I can do my job if the staff of the commission is not allowed to talk to me," he said.

Another commissioner, Maui honeybee farmer Jonathan Starr, took a more cynical view: "I feel like the Navy is trying to kick the can down the road and hide the issue from the community."

The Navy signed the agreement with the Defense Logistics Agency, federal Environmental Protection Agency and the state Department of Health last October to upgrade the underground fuel tank facility, which is the largest of its kind in the nation.

The Navy will spend the first two years studying the hydrogeology of Red Hill and reviewing options for upgrading the tanks, which spilled 27,000 gallons of fuel in January 2014, threatening the island's drinking water.

The agreement gives the Navy two decades to fix the fuel tanks and requires public meetings to provide updates on its progress.

A Navy spokeswoman said in a statement that the non-disclosure agreements are intended to protect national security and ensure that no one gets an unfair advantage regarding potential federal contracts.

The Honolulu Board of Water Supply proposed an alternative last November, but the Navy rejected it.

"It undermines the free flow of information that's necessary for making well-informed decisions about the future of our water." — Marti Townsend, Sierra Club

"In the case of the Red Hill (agreement), implementation involves developing contract specifications for numerous future procurements involving significant federal expenditures," the Navy said in a statement. "Participants in the process will have access to information regarding national defense infrastructure that

must be closely held and is subject to protection under federal law. We follow strict protocols to protect security and integrity, prevent conflicts of interest and ensure there is no unauthorized disclosure of infrastructure information.”

Dean Higuchi, spokesman for the federal Environmental Protection Agency, said EPA officials signed the confidentiality agreement to comply with federal procurement law.

He emphasized that the non-disclosure agreement doesn’t preclude the sharing of information related to site conditions such as monitoring data.

“There’s not like this wall that is put up because of the NDA,” he said. “No, not at all.”

Still, Steven Chang, who leads the solid and hazardous waste branch of the state Department of Health, said the agency decided that its employees would not sign the confidentiality agreement.

Instead, Chang said Health Department officials were advised of federal and state laws by their attorney. Because the agency is a signatory of the agreement, it is still able to participate fully in the implementation process, Chang said.

That’s not the case for the Honolulu Board of Water Supply, a city agency that’s not a formal partner in the agreement but has been critical of the Navy’s response to Red Hill fuel leaks.

“We are still evaluating the merits of signing an NDA or trying to participate with just redacted information,” Board of Water Supply manager and chief engineer Ernie Lau said in a phone interview.

A big concern is the Board of Water Supply’s obligation for transparency “to the board, to our community and to our customers,” Lau said.

He noted that even if agency officials sign the confidentiality agreement, the Navy has no obligation to share all the information it has about the Red Hill fuel tanks and their threat to Honolulu’s water supply.

“On the surface this requirement seems a little benign,” he said. “But one of the questions that we have is do you define security and procurement confidentiality requirements narrowly or broadly? How that’s handled by the parties is a little unclear.”

Lau said that Board of Water Supply officials tried to narrowly define those terms in discussions with a Navy attorney, who “pushed back on that.”

The engineer said he plans to attend the Water Commission meeting Thursday to see how it deals with the issue. So does Marti Townsend, who leads the Hawaii chapter of the Sierra Club, an environmental group.

Townsend is worried about whether the confidentiality agreement will censor too much information.

“It undermines the free flow of information that’s necessary for making well-informed decisions about the future of our water,” she said.
